

Remarks

In response to the final Office Action mailed on April 1, 2006 and the advisory action mailed on June 22, 2006, the Applicant respectfully requests reconsideration based on the above claim amendments and the following remarks. In the present application, independent claims 1, 6, 13, and 22 have been amended and claims 26 and 31-34 have been canceled. The independent claims have been amended to incorporate the features specified in canceled claims 31-34. No new matter has been added.

In the Office Action, claims 1-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hall, et al. (U.S. Patent No. 6,026,375, hereinafter “Hall”) in view of Pong, et al. (U.S. Patent No. 6,237,647, hereinafter “Pong”).

Applicant’s Statement of the Substance of the Interview

A telephonic interview between Applicant’s representative Alton Hornsby, III (Registration No. 47,299) and the Examiner was held on June 1, 2006 to discuss the rejection of the pending claims including the rejection of dependent claims 31-34 which recite that a menu signal sent by a receiver prior to receiving a signal from a transmitter includes a menu of products. A discussion was had regarding the Examiner’s taking of Official Notice of this feature, several references cited by the Examiner which allegedly teach a menu, and that a PDA (Personal Digital Assistant) inherently includes a menu. The Examiner invited the Applicant to file amendments and arguments with respect to this issue and others for consideration.

Claim Rejections - 35 U.S.C. §103

Claims 1-34 are rejected as being unpatentable over Hall in view of Pong. Claims 26 and 31-34 have been canceled. The rejection of the remaining claims is respectfully traversed.

Amended independent claim 1 specifies a method of sending a remote order by a customer to a business. The method includes creating a remote order on a transmitter for a

product or a service and transmitting the order via a signal sent by the transmitter when the transmitter is within the receiving area of and detectable by a receiver in communication with the business, thereby allowing the business to receive and transform the signal back to the original order, and wherein the order comprises information associated by the receiver with a make and model of vehicle from which the order is transmitted, and wherein an employee of the business delivers the order to the vehicle by recognizing that the vehicle matches the make and model of the vehicle from which the order was placed, and wherein the receiver is capable of transmitting a reply to the transmitter reporting a status of the order, and wherein a menu signal sent by the receiver prior to receiving the signal from the transmitter includes a menu of products.

It is respectfully submitted that the cited art of record fails to teach, disclose, or suggest each of the features specified in amended independent claim 1. For example, neither Hall nor Pong, alone or in combination, teaches, discloses, or suggests that a menu signal sent by the receiver prior to receiving the signal from the transmitter includes a menu of products. In the Office Action, Official Notice was taken that it is obvious to provide a menu to facilitate communication. Further support was provided for this feature in the Office Action in view of the references Kohno et al. (US 6,996,468), Wall et al. (US 6,989,763), Phillips et al. (7,010,635), and Smith et al. (7,006,242).

Regarding the Official Notice rejection, the Examiner has alleged that the Applicant failed to properly traverse this rejection in the previous response mailed on October 12, 2005. However, since the Examiner has failed to clearly indicate in the present Office Action that the statement in support of Official Notice is taken to be admitted prior art, Applicant maintains the previous traverse of the finding of Official Notice and requests the citing of a supporting reference, for the reasons given below.

It is respectfully submitted that while it may be obvious to provide a menu (such as on a PDA) in a mobile ordering environment to facilitate communication, it was not considered common knowledge or well-known in the art (at least as of the filing date of the present application) to send a menu signal including a menu of products (to a transmitter, e.g., a PDA) prior to receiving a signal (i.e., an order signal) from the transmitter because the aforementioned feature is not capable of instant and unquestionable demonstration as being well-known. For example, none of the references cited by the Examiner in support of the Official Notice rejection teach, disclose, or suggest this feature. In particular, the earliest filing dates of the references Wall and Kohno are after the filing date of the present application and thus are disqualified as prior art. Furthermore, Phillips and Smith merely disclose the use of menus on a PDA and receiving a menu of remote printing options wirelessly on a PDA from a service provider. However, neither reference discloses receiving a menu signal including a menu of products (which may be ordered).

Moreover, even assuming *arguendo* (i.e., without conceding), that the aforementioned menu feature is disclosed via Official Notice or by the supporting prior art references cited by the Examiner, there is no motivation to combine this feature with Hall. In particular, Hall discloses that after an order is received from a customer, multiple facilities may be “polled” by a System Agent until a facility is located which is capable of satisfying the customer’s order within an acceptable time frame (see Col. 9, lines 19-51). Thus, sending a menu signal including a menu of products prior to transmitting a customer order would actually slow down the system disclosed in Hall as it would require customers to manually peruse through a number of menus from multiple facilities before finding desired products to order. Furthermore, there would be no indication in any of the menus as to whether a facility is able to satisfy a customer’s order within

an acceptable time frame. Thus, the added step of sending a menu signal prior to transmitting a customer order would actually slow down the providing of products to customers in the system of Hall as outlined above.

Based on the foregoing, amended independent claim 1 is allowable and the rejection of this claim should be withdrawn.

Claims 2-5 depend from amended independent claim 1 and thus specify at least the same features. Therefore, these claims are allowable for at least the same reasons. Amended independent claims 6, 13, and 22 specify similar features as amended independent claim 1 and thus are also allowable for at least the same reasons. Claims 7-12, 14-21, 23-25 and 27-30 depend from amended independent claims 6, 13, and 22, and thus are also allowable for at least the same reasons. Therefore, the rejection of claims 2-5, 6-25 and 27-30 should also be withdrawn.

Conclusion

In view of the foregoing amendments and remarks, this application is now in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is invited to call the Applicant's attorney at the number listed below.

The present Amendment is being filed with a fee payment for a one-month extension of time. No additional fees are believed due. However, please charge any additional fees due or credit any overpayment to Deposit Account No. 50-3025.

Date: August 4, 2006

Respectfully submitted,

/Alton Hornsby III/
Alton Hornsby III, Reg. #47299

Withers & Keys, LLC
P.O. Box 71355
Marietta, GA 30007-1355
(404) 849-2093